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1-3-1978

# Murder -- Penalty

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Office of the Secretary of State  
March Fong Eu

111 Capitol Mall, Room 220  
Sacramento, California 95814

Elections Division  
(916) 445-0820

June 27, 1978

TO ALL REGISTRARS OF VOTERS/COUNTY CLERKS

Pursuant to Section 3523 of the Elections Code, I hereby certify that on June 27, 1978, the certificates received from all Registrars of Voters or County Clerks by the Secretary of State established that the statutory initiative Murder-Penalty has been shown by a statistical sampling technique to have been signed by more than 110 per cent of the number of signatures of qualified electors needed to declare the petition sufficient. The Murder-Penalty statutory initiative is, therefore, qualified for the November 7, 1978, general election ballot.

The title and summary which was prepared by the Attorney General's Office for the subject statutory initiative, follows:

MURDER--PENALTY. INITIATIVE STATUTE. Changes and expands categories of first degree murder for which penalties of death or confinement without possibility of parole may be imposed. Changes minimum sentence for first degree murder from life to 25 years to life. Increases penalty for second degree murder. Prohibits parole of convicted murderers before service of 25 or 15 year terms, subject to good-time credit. During punishment stage of cases in which death penalty is authorized: permits consideration of all felony convictions of defendant; requires court to impanel new jury if first jury is unable to reach a unanimous verdict on punishment.

Financial impact: Indeterminable but potentially significant future increase in state costs.

Sincerely,

MARCH FONG EU  
Secretary of State

*Edward Arnold Jr.*  
EDWARD ARNOLD JR.  
Elections Assistant



Office of the Secretary of State  
March Fong Eu

111 Capitol Mall, Room 220  
Sacramento, California 95814

Elections Division  
(916) 445-0820

June 5, 1978

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS

FROM: CASHMERE M. APPERSON, ELECTIONS TECHNICIAN

The proponent of the Murder-Penalty Initiative has filed more than the required number of 312,404 signatures with the counties. (Proponent is: John V. Briggs)

Therefore, pursuant to Elections Code Section 3520(d) you must verify 500 signatures or five per cent of the number of signatures filed, whichever is the greater number. Enclosed is a set of random numbers generated for your county. The use of these sheets will ensure that you verify the correct number of signatures.

You have 15 days from the date you receive this notification to finish your verification. Please complete the enclosed REVISED certificate and certify the count of the number of valid signatures, and attach a blank copy of the petition section to the certificate.

If you have any questions, please call me at the above number.

CMA:mp

Enclosures



Office of the Secretary of State  
March Fong Eu

111 Capitol Mall, Room 220  
Sacramento, California 95814

Elections Division  
(916) 445-0820

December 30, 1977

TO ALL COUNTY CLERKS/REGISTRARS OF VOTERS

Pursuant to Section 3513 of the Elections Code, there is transmitted herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

MURDER - PENALTY  
INITIATIVE STATUTE

Circulating and Filing Schedule

1. Minimum number of signatures required . . . . . 312,404  
Constitution II, 8(b).
2. Official Summary Date . . . . . Friday, 12/30/77  
Elections Code Section 3513.
3. Petition Sections:
  - a. First day Proponent can circulate  
Sections for signatures . . . . . Friday, 12/30/77  
Elections Code Section 3513.
  - b. Last day Proponent can circulate and  
file with the county. All Sections are  
to be filed at the same time within each  
county . . . . . Friday, 5/26/78\*+  
Elections Code Sections 3513, 3520(a).
  - c. Last day for county to determine total  
number of signatures affixed to petition  
and to transmit total to Secretary of  
State . . . . . Friday, 6/2/78

\* Date adjusted for official deadline which falls on a Saturday, Sunday or Holiday.

+ IMPORTANT NOTE: This petition must be filed with the County Clerk or Registrar of Voters by May 4, 1978 to ensure that it will be verified by the county in time to qualify for the November 7, 1978 General Election. May 26, 1978 is the last date which the petition may legally be filed. However, a petition filed on that date could qualify for a later election.

Please call me at (916) 445-0820 if you wish further explanation of this note.

(If the Proponent files the petition with the county on a date prior to 5/26/78, the county has 5 working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit this total to the Secretary of State.)

Elections Code Section 3520(b).

- d. Last day for county to determine number of qualified electors who have signed the petition, and to transmit certificate, with a blank copy of the petition to the Secretary of State . . . . . Saturday, 6/17/78\*

(If the Secretary of State notifies the counties to determine the number of qualified electors who signed the petition on a date prior to 6/2/78, the last day is not later than the fifteenth day after the notification.)

Elections Code Section 3520(d), (e).

- e. If the signature count is between 281,164 and 343,644, then the Secretary of State notifies counties using the random sampling technique to determine validity of all signatures.

Last day for county to determine actual number of all qualified electors who signed the petition, and to transmit certificate, with a blank copy of the petition to the Secretary of State . . . . . Monday, 7/17/78\*

(If the Secretary of State notifies the counties to determine the number of qualified electors who have signed the petition on a date prior to 6/17/78, the last day is not later than the thirtieth day after the notification.)

Elections Code Section 3521(b), (c).

4. Campaign Statements:

Last day for Proponent to file a Campaign Statement of Receipts of Expenditures for period ending 6/23/78 . . . . . Friday, 6/30/78

(If the Secretary of State finds that the measure has either qualified or failed to qualify on a date earlier than 5/26/78, the last date to file is the 35th calendar day after the date of notification by the Secretary of State that the measure has either qualified or failed to qualify. The closing date for this campaign statement is 7 days prior to the filing deadline.)  
Government Code Section 84202.

5. The proponent of the above named measure is:

John V. Briggs  
2924 San Juan Drive  
Fullerton, CA 92635

District Office:  
1441 N. Harbor Blvd.  
Fullerton, CA 92635  
(714) 879-2345

State Capitol Office:  
Room 3086, State Capitol  
Sacramento, CA 95814  
(916) 445-4264

WILLIAM N. DURLEY  
Assistant to the Secretary of State  
Elections and Political Reform



CASHMERE M. APPERSON  
Elections Technician

CMA:mp

NOTE TO PROPONENT: Your attention is directed to Elections Code Sections 41, 44, 3501, 3507, 3508, 3516, 3517, and 3518 for appropriate format and type considerations in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Your attention is further directed to the campaign disclosure and petition circulating requirements of the Political Reform Act of 1974.

November 18, 1977

The Honorable Evelle J. Younger  
Attorney General  
555 Capitol Mall, Suite 350  
Sacramento, California 95814

Dear Ev:

I hereby submit to you for Title and Summary a proposed ballot measure. 1

Enclosed please find my check in the sum of \$200.00.

Sincerely,

  
JOHN V. BRIGGS

Voting Address: 2924 San Juan Drive  
Fullerton, CA 92635

*Handwritten notes:*  
\$200 Cash received w/ int measure  
11/21/77  
[Signature]

DECLARATION OF MAILING

RE: Murder -- Penalty -- Initiative Statute

I, Iver E. Skjeie, declare as follows:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; I reside in the County of Sacramento, State of California; my business address and place of employment is 555 Capitol Mall, Suite 350, Sacramento, California 95814.

The proponent(s) of the above named measure are:

JOHN V. BRIGGS  
2924 San Juan Drive  
Fullerton, CA 92635

District Office:

1441 N. Harbor Blvd.  
Fullerton, CA 92635 (714) 879-2345

State Capitol Office:

Room 3086, State Capitol  
Sacramento, CA 95814 (916) 445-4264

On the 30th day of December, 1977, I mailed a letter, a true copy of which is attached hereto, to the person(s) above named, in an envelope addressed to them at the address(es) set out immediately below the name(s), sealed said envelope(s), and deposited the same in the United States mail at the City of Sacramento, County of Sacramento, State of California, with postage thereon fully prepaid, and there is regular communication between the said place of mailing and the place(s) so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Sacramento, California, on December 30, 1977.

  
Iver E. Skjeie





OFFICE OF THE ATTORNEY GENERAL

**Department of Justice**

555 CAPITOL MALL, SUITE 350

SACRAMENTO 95814

(916) 445-9555

December 30, 1977

**FILED**  
In the office of the Secretary of State  
of the State of California

JAN - 3 1978

MARCH FONG EU, Secretary of State

By Cashman M. Apperson  
Deputy

Honorable March Fong Eu  
Secretary of State  
925 L Street, Suite 605  
Sacramento, CA 95814

Attention: Rico Nannini

Re: Initiative Statute -- Murder -- Penalty  
Our File No. SA77RF0071

Dear Mrs. Eu:

Pursuant to the provisions of sections 3503 and 3513 of the Elections Code, you are hereby informed that on this day we mailed to John V. Briggs, as proponent, the following title and summary:

MURDER--PENALTY--INITIATIVE STATUTE. Changes and expands categories of first degree murder for which penalties of death or confinement without possibility of parole may be imposed. Changes minimum sentence for first degree murder from life to 25 years to life. Increases penalty for second degree murder. Prohibits parole of convicted murderers before service of 25 or 15 year terms, subject to good-time credit. During punishment stage of cases in which death penalty is authorized: permits consideration of all felony convictions of defendant; requires court to impanel new jury if first jury is unable to reach a unanimous verdict on punishment. Financial impact: Indeterminable but potentially significant future increase in state costs.

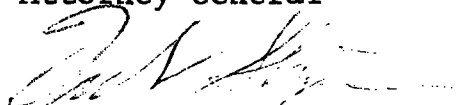
Enclosed herewith is a declaration of mailing thereof and a copy of the proposed measure. According to information

Honorable March Fong Eu  
Page 2

available in our records the address and telephone number of the proponent of this measure are as stated on the declaration of mailing.

Very truly yours,

EVELLE J. YOUNGER  
Attorney General



IVER E. SKJEIE  
Assistant Attorney General

IES:mf  
Enclosures

RECEIVED  
ATTORNEY GENERAL

Nov 17 4 40 PM '77

SACRAMENTO OFFICE

12-point  
Boldface  
Type

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

Type: Roman  
Boldface not  
smaller than  
12-point

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

We, the undersigned, registered, qualified voters of California, residents of \_\_\_\_\_ County (or City and County), hereby propose amendments to the Penal Code, relating to punishment for crimes and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory amendments read as follows:

Section 1. Section 190 of the Penal Code is repealed.

Sec. 2. Section 190 is added to the Penal Code, to read:

190. Every person guilty of murder in the first degree shall suffer death, confinement in state prison for life without possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code shall apply to reduce any minimum term of 25 or 15 years in a state prison imposed pursuant to this section, but such person shall not otherwise be released on parole prior to such time.

Sec. 3. Section 190.1 of the Penal Code is repealed.

Sec. 4. Section 190.1 is added to the Penal Code, to read:

190.1. A case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows:

¶ (a) The question of the defendant's guilt shall be first determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of all special circumstances charged as enumerated in Section 190.2 except for a special circumstance charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder in the first or second degree.

¶ (b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.

¶ (c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 1026 shall be determined as provided in Section 190.4. If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4.

Sec. 5. Section 190.2 of the Penal Code is repealed.

Sec. 6. Section 190.2 is added to the Penal Code, to read:

190.2. (a) The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in state prison for a term of life without the possibility of parole in any case in which one or more of the following special circumstances has been charged and specially found under Section 190.4, to be true:

¶(1) The murder was intentional and carried out for financial gain.

¶(2) The defendant was previously convicted of murder in the first degree or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed murder in the first or second degree.

¶(3) The defendant has in this proceeding been convicted of more than one offense of murder in the first or second degree.

¶(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden or concealed in any place, area, dwelling, building or structure, and the defendant knew or reasonably should have known that his act or acts would create a great risk of death to a human being or human beings.

¶(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest or to perfect, or attempt to perfect an escape from lawful custody.

¶(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver; or cause to be mailed or delivered and the defendant knew or reasonably should have known that his act or acts would create a great risk of death to a human being or human beings.

¶(7) The victim was a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.35, 830.36, 830.4, 830.5, 830.5a, 830.6, 830.10, 830.11 or 830.12, who, while engaged in the course of the performance of his duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a peace officer engaged in the performance of his duties; or the victim was a peace officer as defined in the above enumerated sections of the Penal Code, or a former peace officer under any of such sections, and was intentionally killed in retaliation for the performance of his official duties.

¶(8) The victim was a federal law enforcement officer or agent, who, while engaged in the course of the performance of his duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a federal law enforcement officer or agent, engaged in the performance of his duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his official duties.

¶(9) The victim was a fireman as defined in Section 245.1, who while engaged in the course of the performance of his duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a fireman engaged in the performance of his duties.

¶(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his testimony in any criminal proceeding, and the killing was not committed during the commission, or attempted commission or the crime to which he was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his testimony in any criminal proceeding.

¶(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or a federal prosecutor's office and the murder was carried out in retaliation for or to prevent the performance of the victim's official duties.

¶(12) The victim was a judge or former judge of any court of record in the local, state or federal system in the State of California or in any other state of the United States and the murder was carried out in retaliation for or to prevent the performance of the victim's official duties.

¶(13) The victim was an elected or appointed official or former official of the Federal Government, a local or State government of California, or of any local or state government of any other state in the United States and the killing was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

¶(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity, as utilized in this section, the phrase especially heinous, atrocious or cruel manifesting exceptional depravity means a conscienceless, or pitiless crime which is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his race, color, religion, nationality or country of origin.

(17) The murder was committed while the defendant was engaged in or was an accomplice in the commission of, attempted commission of, or the immediate flight after committing or attempting to commit the following felonies:

(i) Robbery in violation of Section 211.

(ii) Kidnapping in violation of Sections 207 and 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

(v) The performance of a lewd or lascivious act upon person of a child under the age of 14 in violation of Section 288.

(vi) Oral copulation in violation of Section 288a.

(vii) Burglary in the first or second degree in violation of Section 460.

(viii) Arson in violation of Section 447.

(ix) Train wrecking in violation of Section 219.

(18) The murder was intentional and involved the infliction of torture. For the purpose of this section torture requires proof of the infliction of extreme physical pain no matter how long its duration.

(19) The defendant intentionally killed the victim by the administration of poison.

(b) Every person whether or not the actual killer found guilty of intentionally aiding, abetting, counseling, commanding, inducing, soliciting, requesting, or assisting any actor in the commission of murder in the first degree shall suffer death or confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in

paragraphs (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), or (19) of subdivision (a) of this section has been charged and specially found under Section 190.4 to be true.

The penalty shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Sec. 7. Section 190.3 of the Penal Code is repealed.

Sec. 8. Section 190.3 is added to the Penal Code, to read:

§ 190.3. If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating subdivision (a) of Section 1672 of the Military and Veterans Code or Sections 37, 128, <sup>219,</sup> or 4500 of this code, the trier of fact shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior ~~felony~~ felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the express or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.



¶ However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the express or implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.

¶ However, in no event shall evidence of prior criminal activity be admitted for an offense for which the defendant was prosecuted and acquitted. The restriction on the use of this evidence is intended to apply only to proceedings pursuant to this section and is not intended to affect statutory or decisional law allowing such evidence to be used in any other proceedings.

¶ Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time as determined by the court, prior to trial. Evidence may be introduced without such notice in rebuttal to evidence introduced by the defendant in mitigation.

¶ The trier of fact shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the Governor of the State of California.

In determining the penalty, the trier of fact shall take into account any of the following factors if relevant:

(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to Section 190.1.

(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.

(c) The presence or absence of any prior felony conviction.

(d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(e) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.

(f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.

(g) Whether or not defendant acted under extreme duress or under the substantial domination of another person.

(h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication.

(i) The age of the defendant at the time of the crime.

(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.

(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances. If the trier of fact determines that the mitigating circumstances outweigh the aggravating circumstances the trier of fact shall impose a sentence of confinement in state prison for a term of life without the possibility of parole.

Sec. 9. Section 190.4 of the Penal Code is repealed.

Sec. 10. Section 190.4 is added to the Penal Code, to read:

190.4. (a) Whenever special circumstances as enumerated in Section 190.2 are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circumstance. The determination of the truth of any or all of

the special circumstances shall be made by the trier of fact on the evidence presented at the trial or at the hearing held pursuant to Subdivision (b) of Section 190.1.

In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Whenever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime.

If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people.

If the trier of fact finds that any one or more of the special circumstances enumerated in Section 190.2 as charged is true, there shall be a separate penalty hearing, and neither the finding that any of the remaining special circumstances charged is not true, nor if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prevent the holding of a separate penalty hearing.

In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years. |

(b) If defendant was convicted by the court sitting without a jury the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and the people.

If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and shall order a new jury impaneled

to try the issue as to what the penalty shall be. If such new jury is unable to reach a unanimous verdict as to what the penalty shall be, the court in its discretion shall either order a new jury or impose a punishment of confinement in state prison for a term of life without the possibility of parole.

(c) If the trier of fact which convicted the defendant of a crime for which he may be subject to the death penalty was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to Section 1026, the truth of any special circumstances which may be alleged, and the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cause upon the record and cause them to be entered into the minutes.

(d) In any case in which the defendant may be subject to the death penalty, evidence presented at any prior phase of the trial, including any proceeding under a plea of not guilty by reason of insanity pursuant to Section 1026 shall be considered in any subsequent phase of the trial, if the trier of fact of the prior phase is the same trier of fact at the subsequent phase.

(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to Subdivision 7 of Section 11.

In ruling on the application, the judge shall review the evidence, consider, take into account, and/<sup>be</sup>guided by the aggravating and mitigating circumstances referred to in Section 190.3, and shall make a determination as to whether the jury's findings and verdicts that the aggravating circumstances outweigh the mitigating circumstances are contrary to law or the evidence presented. The judge shall state on the record the reasons for his findings.

The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes. The denial of the modification of the death penalty verdict pursuant to subdivision (7) of Section 1181 shall be reviewed on the defendant's automatic appeal pursuant to subdivision (b) of Section 1239. The granting of the application shall be reviewed on the People's appeal pursuant to paragraph (6)

Sec. 11. Section 190.5 of the Penal Code is repealed.

Sec. 12. Section 190.5 is added to the Penal Code, to read:

190.5. Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.

Sec. 13. If any word, phrase, clause, or sentence in any section amended or added by this initiative, or any section or provision of this initiative, or application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other word, phrase, clause, or sentence in any section amended or added by this initiative, or any other section, provisions or application of this initiative, which can be given effect without the invalid word, phrase, clause, sentence, section, provision or application and to this end the provisions of this initiative are declared to be severable.

Sec. 14. If any word, phrase, clause, or sentence in any section amended or added by this initiative or any section or provision of this initiative, or application thereof to any person or circumstance is held invalid, and as a result thereof, a defendant who has been sentenced to death under the provisions of this initiative will instead be sentenced to life imprisonment, such life imprisonment shall be without the possibility of parole.

If any word, phrase, clause, or sentence in any section amended or added by this initiative or any section or provision of this initiative, or application thereof to any person or circumstance is held invalid, and as a result thereof, a defendant who has been sentenced to confinement in the state prison for life without the possibility of parole under the provisions of this initiative shall instead be sentenced to a term of 25 years to life in a state prison.



Murder  
Penalty  
(Briggs)

	Filed	Sampled	Valid	Not Valid	Disc	New Count	Prev Count	Count Δ
Alameda	13 436	671	630	41	0	12 615	12 615	0
Alpine	22	22	22	0	0	22	22	0
Amador	410	410	398	12	-	398	398	0
Butte	2 956	500	367	133	0	2 170	2 170	0
Calaveras	390	390	147	243	-	147	147	0
Colusa	177	177	167	10	2	167	167	0
Contra Costa	10 340	617	497	20	0	9 940	9 940	0
Del Norte	347	347	326	21	0	326	326	0
El Dorado	1 194	1 194	1 180	14	0	1 180	1 180	0
Fresno	17 233	868	583	285	0	11 575	11 575	0
Glenn	320	320	314	6	0	314	314	0
Humboldt	1 515	500	460	40	1	1 388	1 394	6
Imperial	826	500	490	10	0	809	809	0
Inyo	479	479	403	76	1	403	403	0
Kern	3 567	500	434	66	2	3 008	3 096	88
Kings	1 020	500	420	80	3	851	857	6
Lake	754	754	716	38	13	716	716	0
Lassen	302	302	283	19	-	283	283	0
Los Angeles	160 163	8 008	6 140	1 268	12	130 243	134 803	4 560
Madera	933	933	577	356	10	933	933	0
Marin	3 035	500	463	37	2	2 749	2 810	61
Mariposa	194	194	178	16	0	178	178	0
Mendocino	675	500	443	57	2	547	598	1
Merced	1 289	500	479	21	0	1 235	1 235	0
Modoc	240	240	225	15	5	225	225	0
Mono	103	103	102	1	0	102	102	0
Monterey	3 958	500	453	47	0	3 586	3 586	0
Napa	1 991	500	470	30	0	1 872	1 872	0
Nevada	985	501	431	70	0	847	847	0
Orange	48 890	2 444	2 213	231	1	43 889	44 269	380
Placer	2 243	500	472	28	0	2 117	2 117	0
Plumas	224	224	206	18	-	206	206	0
Riverside	9 894	500	453	47	0	8 968	8 968	0
Sacramento	12 637	631	579	52	0	11 596	11 596	0
San Benito	218	218	205	13	-	205	205	0
San Bernardino	12 746	637	529	108	0	10 585	10 585	0
San Diego	52 182	2 609	2 142	467	5	40 942	42 842	1 900
San Francisco	5 032	500	446	54	0	4 489	4 489	0
San Joaquin	9 742	500	445	55	0	8 670	8 670	0
San Luis Obispo	3 357	500	437	63	2	2 857	2 934	77
San Mateo	7 189	500	479	21	1	6 694	6 887	193
Santa Barbara	10 304	515	448	67	2	8 202	8 963	761
Santa Clara	14 552	727	684	38	1	13 410	13 791	381
Santa Cruz	3 660	500	454	46	0	3 323	3 323	0
Shasta	1 357	500	394	106	0	1 069	1 069	0
Sierra	26	26	26	0	0	26	26	0
Siskiyou	516	516	500	16	-	500	500	0
Solano	2 633	500	446	54	0	2 349	2 349	0
Sonoma	4 205	500	464	36	0	3 902	3 902	0
Stanislaus	13 338	666	520	146	0	10 414	10 414	0
Sutter	306	306	258	48	6	258	258	0
Tehama	313	313	303	10	1	303	303	0
Trinity	126	126	120	6	-	120	120	0
Tulare	9 460	500	334	166	0	6 319	6 319	0
Tuolumne	548	500	474	26	11	519	520	1
Ventura	15 002	750	664	86	1	12 902	13 282	380
Yolo	1 374	500	394	106	3	1 068	1 083	15
Yuba	478	478	355	123	3	355	355	0
	471 411		33 847		90		403 446	

-10% 281,164

312,404

+10% 343,644

39 116  
8.30%

86.53%

5 269

395 136

8 510